

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROGELIO MAY RUIZ,

Plaintiff,

V.

R. EHLERS,

Defendant.

Case No. 2:21-cv-00146-JAM-JDP (PC)

ORDER TO SHOW CAUSE WHY
PLAINTIFF'S APPLICATION TO
PROCEED *IN FORMA PAUPERIS*
SHOULDN'T BE DENIED BECAUSE OF
HIS STATUS AS A "THREE-STRIKER"

THIRTY-DAY DEADLINE

Plaintiff Rogelio May Ruiz is a state prisoner proceeding without counsel in this civil rights action brought under 42 U.S.C. § 1983. He has filed an application to proceed in forma pauperis. ECF No. 2. No prisoner may proceed *in forma pauperis* in a civil action if they have previously had three actions dismissed as frivolous, malicious, or for failure to state a claim. 28 U.S.C. § 1915(g). Plaintiff has had three cases dismissed for failure to state a claim or as frivolous:

(1) *Ruiz v. Curry*, No. 1:17-cv-1407-DAD-SKO at ECF No. 35 (failure to state a claim);
(2) *Ruiz v. Curry*, No. 1:17-cv-1454-DAD-SAB at ECF No. 19 (failure to state a claim);
(3) *Ruiz v. Curry*, No. 19-16456, 2019 U.S. App. LEXIS 35092 (9th Cir. 2019) (appeal dismissed as frivolous).

Plaintiff would still be entitled to proceed *in forma pauperis* if his complaint alleged that

1 he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g). It does not. Plaintiff
2 names one defendant, a correctional officer named R. Ehlers. ECF No. 1. Plaintiff alleges that,
3 on October 21, 2020, Ehlers violated his rights by overtightening his restraints. *Id.* at 3. Plaintiff
4 also claims Ehlers retaliated against him for filing grievances by forcing him to walk while
5 injured. *Id.* These allegations, grounded entirely in the past, do not establish that plaintiff is in
6 imminent danger of serious physical injury.

7 Within thirty days, plaintiff should respond to this order and show why, in spite of his
8 “three-striker” status, he should be allowed to proceed *in forma pauperis*. Alternatively, he may
9 discharge this order by submitting the 402 dollar filing fee. If plaintiff’s response does not
10 adequately justify being allowed to proceed *in forma pauperis*, I will recommend that his
11 application be denied.

12 IT IS SO ORDERED.
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14 Dated: March 15, 2021


15 JEREMY D. PETERSON
16 UNITED STATES MAGISTRATE JUDGE
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